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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [REDACTED] 1925

No. [REDACTED] 142 >

GEORGE WILLIAM MOTTRAM, APPELLANT,

vs.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

FILED JULY 18, 1924

(30,510)

(30.510)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 545

GEORGE WILLIAM MOTTRAM, APPELLANT,

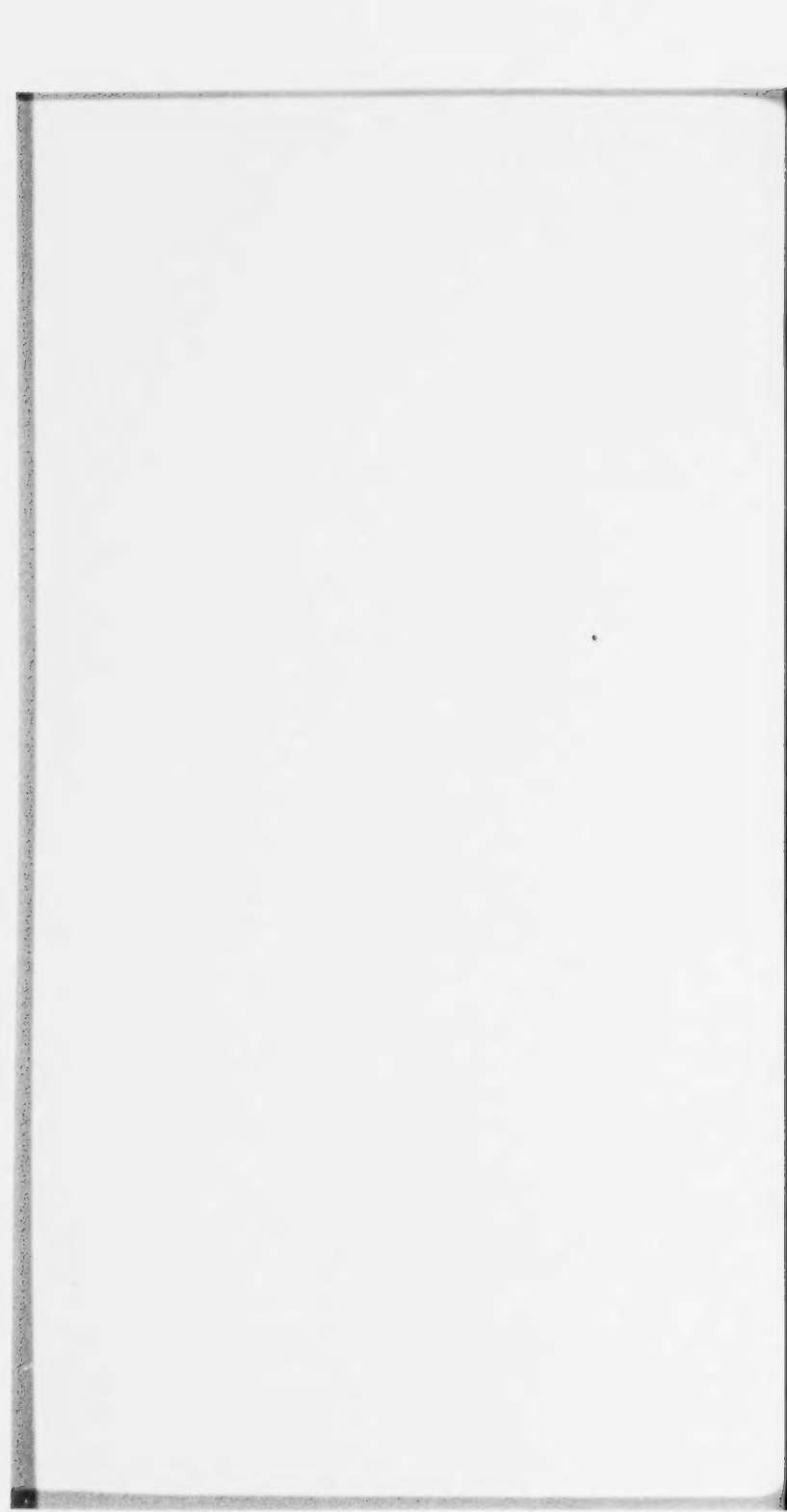
vs.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

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[fol. 1]

IN COURT OF CLAIMS**GEORGE WILLIAM MOTTRAM****VS.****THE UNITED STATES****I. HISTORY OF PROCEEDINGS**

On March 23, 1922, the plaintiff filed his original petition.

On April 6, 1922, by leave of court, the plaintiff filed an amended petition.

On April 24, 1922, the defendant filed a demurrer to said amended petition.

On May 8, 1922, the demurrer was argued and submitted by Mr. Alex. H. McCormick, for the defendant, no attorney for plaintiff being present.

II. ORDER TO MAKE PETITION MORE SPECIFIC—Filed May 15, 1922

This cause having been submitted upon the defendant's demurrer [fol. 2] to the plaintiff's petition it is ordered by the court that the said cause be remanded to the Calendar with instructions to the plaintiff to make more specific and definite the allegations of the petition relative to the authority of the alleged agents to represent the United States or make representations binding upon the Government, and that the amended petition shall be filed on or before the 1st day of June, 1922.

III. SECOND AMENDED PETITION—Filed May 20, 1922

To the honorable the Court of Claims:

Pursuant to the order of the Court of May 15, 1922, overruling the demurrer of the defendant, remanding this case to the calendar, and directing that the plaintiff amend his petition and make more specific allegations with respect to the authority of the alleged agents of the United States, your Petitioner files this his amended petition, and represents as follows:

I. The Act of Congress of May 10, 1918, is as follows:

"Be it Enacted by the Senate and House of Representatives of the United States of American in Congress assembled, That during the existing emergency the President be, and he hereby is authorized, in his discretion, and upon such terms as he shall deem [fol. 3] expedient, through the head of any executive department, to sell any supplies, materials, equipment, or other property hereto-

fore or hereafter purchased, acquired, or manufactured by the United States in connection with, or incidental to, the prosecution of the war, to any person, partnership, association, or corporation, or to any foreign State or Government engaged in war against any Government with which the United States is at war; and any moneys received by the United States as the proceeds of any such sale shall be covered into the Treasury of the United States and a full report of the same shall be forthwith submitted to Congress."

II. In the exercise of the authority and discretion conferred upon him by the Act of May 10, 1918, the President caused to be created by General Orders No. 24, War Department, February 11, 1919, the United States Liquidation Commission—War Department, as the central agency to supervise and direct the disposition of military supplies in Europe. Among other powers conferred upon the said Commission by the President were the following:

"(b) To sell or otherwise dispose of, upon such terms as it shall determine, any property of whatsoever kind or nature acquired, constructed or manufactured by the United States in connection with, or incidental to, the participation of the United States in the war, and now located beyond the territorial limits of the United States and its possessions.

"(c) To employ and fix the compensation of such secretaries, counsel, agents, factors and employees as it shall deem necessary for the proper exercise of its powers and the performance of its duties.

"(d) To adopt rules and regulations governing its procedure and the conduct of its business.

"(f) To exercise all other powers necessary or incidental to the proper performance of its duties as herein defined."

[fol. 4] III. In General Orders No. 18, American Expeditionary Forces, Headquarters, Service of Supply, France, April 1, 1919, it was provided as follows:

"(D) The officers of the various services will receive, store and care for all property of the United States. As soon as any such property is, in their opinion, available for sale they will so report to the Commanding General, S. O. S., and, when such report is approved by him, will notify the general sales agent of its availability for sale, giving him such information in regard thereto, as he may require. They will furnish the necessary information to prospective buyers and exhibit to them the property for sale to the end that it may be advantageously disposed of. They will, under the direction of the Commission and of the general sales agent, negotiate sales, reporting same to the general sales agent. They will prepare for delivery or shipment the property sold or otherwise disposed of, and deliver to the purchaser or to a transportation agency in accordance with the terms of the sale.

* * * * *

"(E) In the absence of express directions by the Commission to the contrary all sales will be made by or under the direction of the general sales agent of the S. O. S., who will have agents at various places in Europe, and will locate and develop markets for all classes of property that may be offered for sale.

* * * * *

"He will properly advertise all sales and take measures to prevent competitive selling by the services. He will, under the general supervision of the Commission, conduct preliminary negotiations with probable buyers, giving them such information as they may require to enable them to submit offers of purchase; and will consummate sales under the general direction of the Commission."

IV. Acting upon the authority conferred upon him by the said [fol. 5] General Orders No. 18 hereinbefore quoted, the General Sales Agent of the S. O. S. employed Messrs. J. G. White & Co. Ltd., of London, England, as sales agent for the material and supplies available for sale at the American Engineer's Depot of the American Expeditionary Force, at Slough, England.

V. Acting as sales agent for the Liquidation Commission, and in conformity with the provisions of the said General Orders No. 18, hereinbefore quoted, the said Messrs. J. G. White & Co. Ltd., widely advertised, with the consent and approval of the said General Sales Agent of the S. O. S., an auction sale to be held at the said Engineer's Depot at Slough, England, on June 25, 1919, and published a catalogue of the items to be sold at the said auction sale, the said catalogue setting forth the conditions of sale and naming Robert H. Ruddock as auctioneer.

VI. In accordance with the conditions of sale set out as a prefix to the said catalogue, a copy of which catalogue was furnished him by the said J. G. White & Co. Ltd., your Petitioner bid upon various items enumerated in the said catalogue. Your Petitioner was known to the said Robert H. Ruddock, Auctioneer, having made previous purchases from the United States Government through him, and was not required to fill in the purchasing slip attached to the said catalogue, but complied with the conditions of sale in all other respects.

VII. Your petitioner's bid was accepted by the said Robert H. Ruddock, Auctioneer, and soon after the sale he received by post addressed to him at his office, 161 New Bond Street, in the County of London, from the said Auctioneer, an itemized written memorandum of sale which included among other items 277,312 lbs. of Garlock Packing @ $3\frac{1}{4}$ pence per pound, for which with the said other items he forthwith paid the said Auctioneer in full.

[fol. 6] VIII. Having paid his account in full on the 30th day of June, 1919, your Petitioner was furnished by the said Auctioneer with an order upon the Engineer's Depot to deliver to your Petitioner

the goods which he had purchased, whereupon your Petitioner proceeded to sell the said packing which he had bought and paid for, and prior to the 4th of July, 1919, had sold 10 tons to A. Roberts & Co. (Heckmondwike), Limited, at a profit of £150, and 11 tons to R. S. Davies, of Mold, England, at a profit of £170.6.8 and 90 tons was sold by the said Davies for account of the Petitioner at a price of 1/1d. per lb. which gave a net profit to your Petitioner of 8¼ d. a lb. or £6090, and the balance of the said packing, viz: 12 tons, 16 cwt. of 28,762 lbs. was of the reasonable market value of 3/6 per lb. which would have given a profit to your Petitioner of 3/2¾ per lb., or £4,629.6.8. The above profits would have aggregated £11,039.13.4.

IX. On or about July 4, 1919, your Petitioner was informed by telephone by the said Auctioneer that it would be useless to present the said delivery order to the Custodian of the Engineer's Depot as the goods could not be delivered, and accordingly your Petitioner was unable to obtain possession of the 277,312 pounds of packing which he had bought or any part thereof. After making repeated demands therefore he was informed by the said Messrs. J. G. White & Co., Ltd., and by the said Robert H. Ruddock, that the United States Government had elected to cancel the said sale to your Petitioner, and the United States Government has failed and refused to deliver any packing at all notwithstanding your Petitioner had paid the United States Government for 277,312 pounds at the rate of 3¼ d. per pound, or the sum of £3,755.15.4 sterling, such payment having been included in a cheque for £6,558.15.8 dated the 30th June, 1919, payable to J. G. White & Co., Ltd.

[fol. 7] X. Your Petitioner represents that he did and performed each, every and all the requirements and undertakings by him undertaken to be performed under his contract of purchase, and duly, formally and repeatedly demanded the delivery of the said Garlock Packing by him purchased, and the United States Government failed, refused and neglected to deliver the same or any part thereof.

XI. Unable to obtain the said 277,312 pounds of Garlock Packing which he had purchased and which the United States had sold to him, your petitioner accepted from the said Messrs. J. G. White & Co., Ltd., sales agent of the said Liquidation Commission, a refund of the amount which your Petitioner had paid for the said packing, upon the express understanding that his rights against the United States Government should not be prejudiced thereby.

XII. Your Petitioner is informed and verily believes that at all material times the market or current price of Garlock Packing was 3/6 per lb.

XIII. Your Petitioner represents that he is entitled to be paid by the United States the difference between the said market or current price of 3/6 per lb. and the contract price of 3¼ d. per lb. and hereby makes claim for £44,773.16.3.

XIV. No other action than that recited hereinbefore has been had on this claim in the Congress of the United States or by any of the

departments of the Government of the United States; no assignment or transfer of this claim or any part thereof or interest therein has been made; your Petitioner is a subject of His Majesty, the King of Great Britain, and has his residence at 39 Prince's Square, Bayswater, London, W., and place of business at No. 1, Montague Street, Russell Square, formerly at 161 New Bond Street, London, England, where he carries on business as a General Merchant; and has not in any way [fol. 8] voluntarily aided, abetted, or given encouragement to rebellion against the Government of the United States.

Jennings C. Wise, 735 Southern Bldg., Washington, D. C.,
Attorney for Claimant. John S. Wise, Jr., 20 Broad Street,
New York City; Bouve & Parker, Washington, D. C.;
Munn, Anderson & Munn, New York and Washington, D.
C., of Counsel.

Jurat showing the foregoing was duly sworn to by Jennings C. Wise omitted in printing.

[fol. 9] IV. GENERAL TRAVERSE—Filed June 2, 1922

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

Robert H. Lovett, Assistant Attorney General.

O. K. A. H. McC.

V. ARGUMENT AND SUBMISSION

On February 12, 1924, the case was argued by Mr. Jennings C. Wise, for the plaintiff.

On February 13, 1924, the argument was continued by Mr. Wise, and concluded by Mr. Dwight E. Rorer, for the defendant, and the case was submitted.

[fol. 10] VI. Findings of Fact, Conclusion of Law, and Opinion of the Court by Hay, J.—Entered March 3, 1924

This case having been heard by the Court of Claims the court, upon the evidence, makes the following

FINDINGS OF FACT

I

The act of Congress approved May 10, 1918, 40 Stat. 548, authorized the President during the existing emergency "to sell any supplies, materials, equipment or other property heretofore or hereafter purchased, acquired, or manufactured by the United States in connection with, or incidental to, the prosecution of the war." In pur-

suance of the authority vested in him by said act the President of the United States, through the Secretary of War, created the United States Liquidation Commission by virtue of General Orders No. 24, dated February 11, 1919, which General Orders authorized the disposal of all property belonging to the United States and which was located beyond its territorial limits. And on April 1, 1919, the United States Liquidation Commission was designated by the Secretary of War to supervise and direct the disposition of all surplus property in Europe belonging to the United States acquired, constructed, or manufactured in connection with the war.

II

By virtue of the act of May 10, 1918, and the orders above cited on April 14, 1919, the following contract in writing was entered into by the United States and J. G. White & Company, Limited, London, England:

"Articles of agreement entered into this fourteenth day of April, nineteen hundred and nineteen, between Colonel C. R. Pettis, Corps of Engineers, chief engineer, Base Section No. 3, S. O. S., American Expeditionary Forces, 29 Great Pulteney Street, London, for the United States Army, hereinafter designated as the contracting officer, representing the United States of America, of the first part, and J. G. White & Company, Limited, of 9 Cloak Lane, London, E. [fol. 11] C., England, hereinafter designated as the selling agents, of the second part.

"Witnesseth, that the said parties do hereby covenant and agree, to and with each other, as follows:

"Article No. 1. For and in consideration of the commission hereinafter stated, the selling agents agree to sell for the account of the contracting officer certain quantities of engineer stores and equipment now in storage at the U. S. engineer depots at Slough and Didcot or at Suppliers' Works, or at such other locations as the contracting officer may designate, such stores and equipment being enumerated and described in an inventory compiled by the contracting officer and consisting of lumber, steel roof trusses, portable buildings, contractors' construction equipment, cordage and rope, canvas, tarpaulins and cotton sheets, machine tools and machine-shop equipment, office equipment and stationery, small trade tools, wire and wire products, special plant and machinery, such as water filtration apparatus, acetylene lighting equipment, incinerators, and other stores and equipment as may be designated by the contracting officer.

"Article No. 2. All material shall be offered at duly advertised public auction before July 1st, 1919. In cases where items are withdrawn from sale by auction, due to the bids received for same being below the reserve prices fixed for said items, then said items may be sold in the open market, or otherwise disposed of as directed by the contracting officer. For all sales made subsequent to offering at auction, the selling agents will negotiate sales under such conditions as may be prescribed by the contracting officer.

"Article No. 3. The selling agents shall supply at their own expense all auctioneers, cashiers, accountants, salesmen, engineers, and assistants required, except laborers, for preparation of catalogues, listing and describing the various classes of stores and equipment from the inventories furnished by the contracting officer; distribution of same, conduct of auctions and sales, collection of moneys, preparation of accounts as required by the contracting officer, supervision of delivery of goods sold and payment for same to the contracting officer. The selling agents shall advertise the public auctions at their own expense and shall bear all expenses in connection with the sale and delivery of stores and equipment sold by them, except the cost of labor required in handling said stores and equipment.

"Article No. 4. For and in consideration of the services above mentioned when rendered by the selling agents, the contracting officer agrees to pay the selling agents and the selling agents agree to accept as full remuneration for said services a net commission of 5% (five per cent) of the lowest net price received by the contracting officer for all stores and equipment sold.

"Article No. 5. Upon the request of the contracting officer the selling agents agree to supply personnel and operate said U. S. Engineer depots at Slough and Dideot, including supervision and labor, for an additional remuneration of $2\frac{1}{2}\%$ (two and a half per cent) of the lowest net price received by the contracting officer for all stores and equipment sold. Said $2\frac{1}{2}\%$ is to cover operation of said depots for a period of two and a half months, beginning April 30th, 1919, or thereabouts, and continuing until July 15th, 1919, at the rate of 1% (one per cent) per month, and said remuneration of [fol. 12] $2\frac{1}{2}\%$ shall be adjusted pro rata for any variation of the date (April 30th, 1919) on which the selling agents take over operation of said depots.

"Article No. 6. The selling agents guarantee the payment for all sales made by them and shall pay over by cheques made to the order of the engineer disbursing officer, Base Section No. 3, during each week, all moneys received from sale of stores and equipment during the previous week, together with detailed accounts covering sales made and commission due the selling agents under articles 4 and 5. Said commissions are to be paid by the contracting officer to the selling agents within one week from date of accounts.

"Article No. 7. All stores and equipment sold and paid for are to be removed from the depots or other storage points within fifteen days from date of sale. If the purchaser fails to remove the stores or equipment within the prescribed time, the selling agents agree to remove the materials at their own expense upon written notice from the contracting officer. The period of fifteen days mentioned above may be extended for good reason at the discretion of the contracting officer.

"Article No. 8. All sales made by the selling agents for the contracting officer are to be made under the conditions of the British

and American trading with the enemy acts, which prohibit all trade with enemy countries, or pursuant to such modifications as may later be enacted.

"Article No. 9. This contract shall terminate on the 15th day of July, 1919, and may be renewed or extended on such terms as are agreed between the contracting parties.

"Article No. 10. The contracting officer reserves the right to terminate this contract at any time upon giving the selling agents 10 days' written notice of such intention. In case the contracting officer terminates the contract in this manner the selling agents shall submit to the contracting officer a statement of expenses that the selling agents have contracted in the performance of the contract up to the time of the termination of the contract. The selling agents shall be entitled to reimbursement by the contracting officer for such of these expenses as are considered correct and just by the contracting officer.

"Article No. 11. The contracting officer reserves the right to withdraw from sale any stores or equipment at any time upon written notice of such intention to the selling agents. The contracting officer is to exercise this privilege in case of military necessity only.

"Article No. 12. The commissions on the selling price, as paid to the selling agents by the contracting officer, shall constitute full and complete payment for all services rendered or materials furnished by the selling agents for the account of the contracting officer, including cost of advertising, office charges, and all other expenses. The selling agents agree that they will not solicit or receive any other commission or profit under this contract except the commissions paid to them by the contracting officer. The contracting officer assumes no liability for claims of any character that may be made by purchasers against the contracting officer, and the selling agents shall hold and save the contracting officer and his authorized representatives free and harmless from and against all and every claim, by purchasers and prospective purchasers, that may arise from the operations incident to this agreement.

[fol. 13] "Article No. 13. The contracting officer reserves the right to add to, or subtract from, the general classification of materials as enumerated in article 1. The description and quantities, as stated in the inventories of the contracting officer, are subject to verification by the selling agents, and the contracting officer assumes no liability for the accuracy of such descriptions and quantities.

"Article No. 14. Within five days after the signing of this contract the selling agents shall furnish a surety bond in the sum of fifty thousand pounds (£50,000) in a company approved by, and in a form satisfactory to, the contracting officer; such surety bond to cover the performance of this contract to the satisfaction of the contracting officer.

"Article No. 15. The contracting officer reserves the right to fix a reserve value on any item or on any group of items to be sold.

"Article No. 16. The selling agents will make certification to the contracting officer, in a form satisfactory to the contracting officer, to the effect that certain stores, materials, or equipment, have been sold to a designated purchaser at a stated price.

"Article No. 17. Neither this contract or any interest therein shall be transferred to another party or parties and in the case of such transfer the contracting officer may refuse to carry out this contract either with the transferer or transferee.

"Article No. 18. Any difference or dispute arising under this contract shall be referred to arbitration pursuant to the provision of the arbitration act of 1889 or any subsequent modification thereof for the time being in force.

"Article No. 19. It is agreed between the parties that the interpretation of this contract, and their rights and obligations under it, shall be determined in accordance with English law, but the interpretation of this article shall not conflict with article 8.

"Article No. 20. No Member of or Delegate to Congress or Resident Commissioner nor any person belonging to or employed in the military service of the United States is, or shall be admitted to any share or part in this contract, or to any benefit which may arise therefrom.

"Article No. 21. The term "Contracting officer" wherever used in this contract, shall include the duly appointed successor of such officer.

"In witness whereof the parties aforesaid have hereunto placed their signatures the date first hereinbefore written.

"C. R. Pettis, Colonel Corps of Engineers, Contracting Officer.
Witness: J. Moultrie Ward. J. G. White & Company,
Limited, C. W. Hough, Director, Selling Agents. Witness:
J. H. Wusemell.

"Approved: John Biddle, Major General U. S. A., Commanding Base Section No. 3, SOS, American Expeditionary Forces."

[fol. 14]

III

J. G. White & Company, Limited, employed Robert H. Ruddock, of London, England, to sell at auction the engineer stores and equipment at the United States Engineer's depot at Slough, England, and acting under the authority conferred upon it by the contract aforesaid, J. G. White & Company, Limited, advertised in the press of England a sale by auction to be held by it at the American Engineer's depot at Slough, England, on Tuesday, June 24, 1919, and the days following. The said J. G. White & Company, Limited, also issued a catalogue, purporting to contain a list of goods, with description and quantity of the same. On the cover of that catalogue appeared the following:

"Sales Nos. 10 to 13.

"By direction of the U. S. Engineers of the American Expeditionary Force, American Engineers' Depot, Slough.

"Catalogue of the valuable and extensive new engineers' equipment & supplies, constructional material, railway and dock equipment, and stores.

"For sale by auction on Tuesday, 24th June, 1919, and following days at eleven each day.

"Messrs. J. G. White & Co., Ltd., 9 Cloak Lane, London, E. C. 4.

"Robert H. Ruddock, Auctioneer and Valuer, 7 Fleet Street, London, E. C. 4."

On page 2 of the catalogue appeared the following:

"Conditions of Sale

"1. The highest bidder of each lot, if in due time, shall be the purchaser thereof, but subject to the auctioneer reserving the right of refusing the bidding of any person, without giving any reason for such refusal. Should any dispute arise between two or more approved bidders, or between the auctioneer and any approved bidder, the lot or lots to be put up again or not, at the discretion of the auctioneer. The vendors, the U. S. A. Government, reserve the right to bid by themselves or their agents, and withdraw any lot previous to or at the time of sale.

"2. The whole shall be sold, with all faults, imperfections, errors of description, in the lots of the catalogue; or as these may be divided or conjoined at the sale, and without any warranty whatever, the buyers being held to have satisfied themselves as to the condition, quality, and description of the lots before bidding. No person to advance less than 1s. at each bidding up to five pounds; above five pounds, 5s.; and so on in proportion, nor shall any bidding be retracted.

"3. The purchasers are to pay down immediately a deposit of 5s. in the pound, or such other sum as the auctioneer shall name, in part payment (each deposit to be applicable to any lot or lots purchased), and to give in their names and places of abode; in default of which the lot or lots so purchased to be at the disposal of the auctioneer.

"4. The purchaser shall pay the remainder of his purchase money for all lots purchased by him within two days immediately following the last day of sale and before the possession of any lot shall be delivered [fol. 15] to him. Payments must be made by banker's draft or guaranteed cheques, and will only be accepted if made payable to J. G. White & Co., Ltd.

"5. The lots to be at the purchaser's expense and risk from the fall of the hammer, and to be taken away with all faults and imperfections and errors of description, at the purchaser's risk, within seven days of the last day of sale. In cases where one buyer purchases

more than one lot, the whole of the amount of the lots purchased is to be paid before any one lot is delivered, and no person is to be entitled to anything not described in the lots; neither will any lot be transferred from the purchaser to a subpurchaser. No allowance whatever will be made for errors in description or quality, but the lots are to be cleared as shown at the sale.

"6. All lots left after the specified time will be entirely at the purchaser's risk, and will be liable to any expenses that may arise from their not having been cleared in accordance with the above conditions.

"7. The purchasers to be answerable for all damage they, their carriers, or other agents may do to any lots, or the premises, in taking down or removing their respective lots, and to properly repair the same before their lots are removed from the premises, or deposit with the auctioneer such sum of money as the auctioneer may determine to cover the cost of making good such damage.

"8. Inasmuch as the auctioneer acts only as agent, he shall not be considered personally responsible for any default on the part of either purchaser or vendors.

"9. Upon failure to comply with the above conditions, the amount deposited shall be forfeited; the lots uncleared within the time aforesaid shall be re-sold, either by public sale or private contract, without any intimation to the defaulter, and the deficiency (if any) by such second sale, together with all charges attending the same shall be made good by the defaulter or defaulters at this present sale, and be recoverable as and for liquidated damages, but any surplus that may arise therefrom shall belong solely to the vendors. The auctioneer or vendors shall have full right to enforce any contract made at this sale, and to sue for the full price of the goods, and the foregoing provision as to re-sale shall be entirely without prejudice as to such right.

"10. Neither the vendors nor the auctioneer will be liable or responsible for or in respect of any accident which may happen to purchasers or intending purchasers or their servants before, after, or during the sale, viewing or removal of any lots.

"11. Where lots are cased or crated, the buyer must take the case or crate at cost price.

"Lastly. The auctioneer to be the sole arbitrator in every matter of dispute.

"N. B.—Where cheques are accepted in payment of purchaser's sale accounts, their lots must not be removed until advice has been received that the cheque has been duly honored.

"Robert H. Ruddock, Auctioneer and Valuer, 71 Fleet Street, London, E. C. 4. (Ibid.)"

[fol. 16] On page 3 of said catalogue appears the following:

"Note.—1. For the convenience of purchasers attending the sale, a cold collation will be provided, and the sale adjourned for half an hour.

"2. The auctioneer begs to draw attention to the fact that the whole of the lots comprised in this catalogue are quite new.

"3. Where there is a series of lots of the one article, the auctioneer will give the purchaser of the first lot the option to take the whole series or as many lots as he requires at the same price."

On pages 58 and 59 of said catalogue the following items appear:

Steam Packing

Lot	
1256.	420 ft. Graphoflake packing, $\frac{3}{8}$ in. diameter.
1257.	260 ft. ditto, $\frac{3}{4}$ in. diameter.
1258.	336 ft. ditto, $\frac{1}{4}$ in. diameter.
1259.	203 ft. ditto, $\frac{3}{8}$ in. diameter.
1260.	240 ft. ditto, $\frac{1}{2}$ in. diameter.
1261.	408 ft. ditto, 1 in. diameter.
1262.	40 lbs., $\frac{1}{2}$ in. diameter.
1263.	50 lbs., $\frac{3}{8}$ in. diameter.
1264.	45 lbs., $\frac{1}{4}$ in. diameter.
1265.	140 lbs. ditto, 1 in. diameter.
1266.	15 lbs. ditto, $\frac{1}{4}$ in. diameter.
1267.	208 cwt. Garlock packing, $\frac{3}{4}$ in. diameter.
1268.	360 cwt. ditto, 1 in. diameter.
1269.	18 cwt. ditto, $\frac{1}{4}$ in. diameter.
1270.	250 cwt. ditto, $\frac{3}{4}$ in. diameter.
1271.	400 cwt. ditto, $\frac{1}{2}$ in. diameter.
1272.	200 cwt. ditto, 1 in. diameter.
1273.	150 cwt. ditto, $\frac{1}{2}$ in. diameter.
1274.	400 cwt. ditto, $\frac{1}{4}$ in. diameter.
1275.	450 cwt. ditto, $\frac{1}{2}$ in. diameter.
1276.	60 cwt. ditto, $\frac{5}{8}$ in. diameter.
1277.	70 cwt. ditto, $\frac{3}{4}$ in. diameter.

IV

Lieutenant David A. Hart, Corps of Engineers, United States Army, was post commander and depot engineer officer of the U. S. Army Engineer's depot, Slough, England, from September, 1918, to August, 1919, and preparatory to the sale by auction of the stores and equipment in the said depot prepared an inventory of said stores and equipment at the said depot, and the original sheets comprising said inventory were sent daily to the office of Capt. Donald A. Smith, Engineer Corps, United States Army. The original inventory of these supplies and equipment was transcribed in the office of said Smith, and furnished by him to J. G. White & Company, Limited.

V

The originals were rough notes, called checker's notes, and were in pencil, and the stenographers in the office of Captain Smith transcribed them from said notes to other sheets to be mimeographed. [fol. 17] These mimeographed sheets were transmitted by Captain Smith to J. G. White & Company, Limited, whose duty it was under its contract to prepare the catalogue listing and describing the stores and equipment for sale, and whose duty it was under its contract to verify the description and quantities stated in the inventory furnished by the contracting officer.

In preparing the typewritten sheets for mimeographing an error occurred in that one of the stenographers read the abbreviation on said rough notes intended for pounds, avoirdupois, as hundredweights, and so recorded it on the typewritten sheet in connection with the listing of certain Garlock steam packing, the subject matter of this suit. These mimeographed sheets were used in the preparation of the catalogue by J. G. White & Company, Limited, and were not verified by them; and when the catalogue was published and distributed it listed the quantity of Garlock steam packing as being hundredweights instead of pounds. Said listing of said packing is set out in Finding III.

VI

The said catalogue was published and put in circulation at least a week before June 24, 1919, and the plaintiff received notice in advance of the auction sale through the notices in the press and from the catalogue which was furnished to him at his request by the auctioneer. The plaintiff attended the sale as a bidder on June 25, 1919, the second day of the sale, and when the Garlock steam packing was offered for sale bid upon the same after the question of quantity of the said packing had been raised and after the auctioneer had stated that he could not guarantee any quantity. Lots 1268 to 1277 of Garlock steam packing were knocked down to the plaintiff at 3¼ pence per pound. The quantity in pounds of Garlock steam packing appeared in the catalogue to be 278,432 pounds.

VII

The plaintiff before the sale on June 25, 1919, had made repeated visits to the United States Engineers' depot at Slough, England, and had full opportunity to acquaint himself with the character and quantity of the supplies which were to be sold at the auction sale. At his request the Garlock steam packing was pointed out to him by one of the employes of the depot on the day before the sale. The Garlock steam packing was all housed together in a part of one warehouse, and it was shown to the plaintiff, and he was given full opportunity to arrive approximately at its quantity. He then had the catalogue which listed for sale 278,432 pounds of Garlock steam packing. It would have required 560 cases to hold that amount of

packing, and it would have required 15,000 cubic feet of space to house it. Such a quantity would have supplied the needs of Great Britain for Garlock packing for twenty years. On many occasions the plaintiff, prior to June 24, 1919, was at the depot, and was given every facility to inspect the goods and supplies which were stored there and which were afterwards sold at the auction sale aforesaid.

[fol. 18]

VIII

The auctioneer did not know that a mistake had been made in the catalogue, and did not know that the quantities of Garlock packing listed therein were not present in the depot, and in due course rendered the plaintiff a bill for £6,558 15s. 8d., covering the various purchases made by the plaintiff at said auction sale of June 25, 1919, including the item of £3,756 15s. 4d. for 278,432 pounds of Garlock packing at 3¼ pence per pound. On June 30, 1919, the plaintiff gave his check No. C-959453, to J. G. White & Company, Limited, in the amount of £6,558 15s. 8d. in full payment of the account rendered to him by the auctioneer of J. G. White & Company, Limited, including the item of £3,755 15s. 4d. for 278,432 pounds of Garlock steam packing at 3¼ pence per pound, and the said check was duly cashed by the said J. G. White & Company, Limited, and honored by the banking company upon which it was drawn. When said check was accepted by J. G. White & Company, Limited, it knew that there was no such quantity of Garlock steam packing at the Engineers' depot at Slough, England.

On July 4, 1919, the plaintiff was notified by telephone by the auctioneer that it would be useless for him to present his delivery slip at the depot warehouses for the Garlock packing as a mistake had been made in the quantity listed in the catalogue, and no such quantity was present in the depot and had never been there. On July 4, 1919, the plaintiff wrote to J. G. White & Company, Limited, stating that he had been informed by the auctioneer that there was doubt about the quantity of Garlock packing and that he expected the delivery of the quantity for which he had paid, to which on July 8, 1919, J. G. White & Company, Limited, replied that the information furnished the plaintiff by the auctioneer was correct, explaining how the mistake was made, and stated that it considered the explanation sufficient to close the incident with the return of the money paid. On July 10, 1919, the plaintiff replied by saying that he would hold J. G. White & Company, Limited, to contract.

IX

The plaintiff made repeated demands upon J. G. White & Company, Limited, for the delivery to him of the 278,432 pounds of Garlock steam packing which he had purchased on June 25, 1919, at the said auction sale and for which he had paid on June 30, 1919, but the said J. G. White & Company, Limited, refused to deliver the same upon the ground that it was not and never had been in existence. On August 18, 1919, the plaintiff received the following

460 230
1600

letter from Robert H. Ruddock, the auctioneer and agent of J. G. White & Company, Limited:

"Slough Sale, Garlock Packing, Lots 1267 to 1277

"DEAR SIR: I have to give you notice that the sales of all the lots numbered as above at the auction sale held on Wednesday, 26th June, 1919, by me on behalf of the vendors, the U. S. A. Government, are cancelled by reason of arrangements arrived at by the buyers, which restricted free bidding for the same.

[fol. 19] "You were the purchaser of a portion of this packing, and I inclose Messrs. J. G. White & Co.'s check in your favor for £3,755 15s. 4d., being the purchase money paid by you for the same."

The check enclosed in said letter was received by the plaintiff, whereupon the plaintiff through his counsel repudiated the charges of collusive bidding and refused to accede to a cancellation of said sale upon said ground, and returned the aforesaid check to J. G. White & Company, Limited. After this check was returned to J. G. White & Company it was agreed between plaintiff's counsel and the counsel of J. G. White & Company, Limited, that an amount equal to the purchase money paid by the plaintiff for the 278,432 pounds of Garlock steam packing would be accepted by the plaintiff from J. G. White & Company, Limited, with the express understanding that the rights of neither party should be prejudiced thereby. Whereupon the plaintiff received from J. G. White & Company, Limited, the sum of £3,755.15.4, the sum which he had previously paid it for the said Garlock steam packing.

X

The plaintiff, immediately after he had purchased the Garlock steam packing at the said auction sale, sold R. S. Davies, of Mold, England, eleven tons of said packing at a profit for the eleven tons of £170.6.8 and sold to A. Roberts & Co., Ltd., of Heckmondwicke, ten tons at a profit for the ten tons of £150. Davies paid £100 on account of his purchase and Roberts £150 on his. All monies paid by both Davies and Roberts were returned to them by the plaintiff, and neither of them received any of the packing from the plaintiff or from anyone else.

All the Garlock packing which was actually in the Slough Depot was sold by J. G. White & Company, Limited, by private sale to R. S. Davies, of Mold, England, at 3¼ pence per pound. This sale was made on October 22, 1919.

XI

On June 30, 1919, plaintiff gave an option in writing to R. S. Davies, of Mold, on from 50 to 90 tons of said Garlock packing at 8 pence per pound/ the said option, among other things, containing the following: "Subject to the quantity being in stock as sold by the U. S. A."

XII

✓ The market price of Garlock steam packing on June 25, 1919, at Slough, England, was 3.6 per pound, and the reasonable value at said time and place of 278,432 pounds of Garlock steam packing £44,773,16.3.

CONCLUSION OF LAW

Upon the foregoing findings of fact the court decides as a conclusion of law that the plaintiff is not entitled to recover, and that his petition be and the same is hereby dismissed. Judgment is [fol. 20] rendered against the plaintiff for the cost of printing the record in this cause, the amount thereof to be entered by the clerk and collected by him according to law.

OPINION

HAY, Judge, delivered the opinion of the court:

This is a suit brought by the plaintiff, George William Mottram, a British subject, against the United States to recover a sum of something over \$200,000. It is alleged by the plaintiff that at an auction sale of stores belonging to the United States held at Slough, England, on June 25, 1919, he bought and paid for a certain lot of Garlock steam packing which was put up for sale by an agent of the United States; that the quantity of said packing so purchased by him was not delivered to him, and that although the money which he paid for said packing has been returned to him he is entitled to recover from the United States the market value of said packing at the time the agent of the United States failed to deliver it to him.

By the act of Congress of May 10, 1918, the President was authorized "through the head of any executive department to sell any supplies, materials, equipment or other property heretofore or hereafter purchased, acquired, or manufactured by the United States in connection with or incidental to the prosecution of the war." In the exercise of the authority so conferred upon him the President of the United States selected the Secretary of War to sell the property described in the act; and the Secretary of War, in pursuance of the authority vested in him, authorized the sale of certain property in England, and on April 14, 1919, Col. C. R. Pettis, Corps of Engineers, United States Army, acting under the authority of the Secretary of War, entered into a written agreement with J. G. White & Company, Limited, of London, England, whereby the said White & Company undertook under the terms of the contract to sell for the United States certain quantities of engineer stores and equipment in storage at the U. S. Engineer depots at Slough and Didcot, and other places. In pursuance of said contract White & Company advertised for sale by auction on June 24, and the following days, certain quantities of engineer stores and equipment at Slough, England.

Among these stores was a quantity of Garlock steam packing, and when the catalogue listing the property for sale was published and distributed it was set out in said catalogue that there was for sale 278,432 pounds of Garlock steam packing. The plaintiff bid for this packing and the same was knocked down to him at $3\frac{1}{4}$ pence per pound. The plaintiff purchased other property at said auction sale, and gave White & Company his check for all of his purchases, included in which check was the amount due by him for the Garlock packing. This check was accepted by White & Company and collected by them.

It, however, was discovered in a few days after the sale that there was not the quantity of Garlock packing in the storehouses at Slough which had been advertised and which had been bid for by the plaintiff. It was explained to the plaintiff that a mistake had been made in making the inventory by the stenographers who transcribed the [fol. 21] notes furnished them, and that the inventory furnished by the contracting officer to White & Company was in error as to the quantity of Garlock steam packing. The plaintiff insisted upon the delivery to him of the quantity of packing for which he had bid or the payment to him of the market value of the packing at the time of the sale. White & Company were unable to deliver the packing, and returned to the plaintiff the money which he had paid for the packing, which he finally accepted with the understanding that his rights should in nowise be affected by the acceptance.

Before the sale on June 25, 1919, the plaintiff had visited the storehouses at Slough for the purpose of inspecting the stores which were to be sold on that day; on the occasion of one of his visits he asked about Garlock steam packing; the location of all of it in the storehouse was pointed out to him. If there had been 278,432 pounds of such packing it would have occupied a space of 15,000 cubic feet. Such a quantity of Garlock packing would have supplied the needs of Great Britain for at least twenty years. The facts show that the plaintiff before the sale knew there was not at Slough anything like the quantity of Garlock packing which was advertised for sale in the catalogue. When on June 25, 1919, the auctioneer put up the Garlock packing for sale he was asked in the presence of the plaintiff if he guaranteed the quantity of Garlock packing which he was offering, and the auctioneer stated that he did not guarantee the quantity. With his knowledge of the probable quantity of Garlock packing and this statement of the auctioneer the plaintiff made his bid. And afterwards on June 30, 1919, when he gave to one Davies an option on ninety tons of this packing the plaintiff took care to specify in the option that it was "subject to the quantity being in stock as sold by the U. S. A." The plaintiff having knowledge that the quantity of packing which he bid for was not in the possession of the vendor, and knowing when he bid and when he paid for the packing that it could not be delivered, he can not be heard in this court to assert a claim so evidently based upon a design to get something for nothing.

But apart from the aspect of the case above referred to the plain-

tiff has no claim against the United States. All of the plaintiff's transactions were with White & Company. That company conducted the sale, issued the catalogue, and employed the auctioneer. The plaintiff paid his money to White & Company, received it back from White & Company, and fully recognized that White & Company were the agents of the United States. That agency was governed by the contract which the United States had with White & Company, and all persons dealing with White & Company as the agent of the United States had the duty imposed upon them to inquire as to what its power was in issuing catalogues listing the quantities of articles for sale, and how far statements contained in such catalogues would bind the United States.

This contract among other things provided: "The contracting officer assumes no liability for claims of any character that may be made by purchasers against the contracting officer, and the selling agents shall hold and save the contracting officer and his authorized representatives free and harmless from and against all and every claim, by purchasers and prospective purchasers, that may arise [fol. 22] from the operations incident to this agreement." Under this provision of the contract it is obvious that whatever claim the plaintiff may have it is not such a claim as can be successfully urged against the United States.

Moreover, it was the duty of White & Company under the contract to supply all auctioneers, accountants, cashiers, salesmen, engineers, and assistants for the preparation of catalogues, listing and describing the various classes of stores and equipments from the inventories furnished by the contracting officer; and the contract further provides: "The description and quantities, as stated in the inventories of the contracting officer, are subject to verification by the selling agents, and the contracting officer assumes no liability for the accuracy of such descriptions and quantities." The Government is, therefore, not bound by the mistakes made in the catalogue. The plaintiff was bound to take notice and to inform himself of the extent of the authority of the selling agent to bind the Government.

When White & Company by mistake listed in the catalogue a quantity of Garlock steam packing which was not in storehouses and which could not be delivered when sold, the mistake was that of White & Company and not that of the United States and the plaintiff can not look to the United States for redress.

The petition of the plaintiff must be dismissed. It is so ordered.

Graham, Judge; Downey, Judge; Booth, Judge; and Campbell, Chief Justice, concur.

[fol. 23]

VII. JUDGMENT

At a Court of Claims held in the City of Washington on the Third day of March, A. D., 1924, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises find in favor of the defendant, and do order, adjudge and decree that the plaintiff, as aforesaid, is not entitled to recover and shall not have and recover any sum in this action of and from the United States; and that the petition herein be and the same hereby is dismissed; And it is further ordered, adjudged and decreed that the United States shall have and recover of and from the plaintiff, as aforesaid, the sum of Six hundred and twenty-three dollars and fifty-seven cents (\$623.57), the cost of printing the record in this court, to be collected by the Clerk, as provided by law.

By the Court.

VIII. HISTORY OF PROCEEDINGS AFTER ENTRY OF JUDGMENT

On April 7, 1924, the plaintiff filed a motion for a new trial.

On April 14, 1924, the court filed an order overruling plaintiff's motion for a new trial.

IX. PLAINTIFF'S PETITION FOR APPEAL AND ORDER—June 18, 1924

Now comes the plaintiff in the above-entitled cause and by counsel moves the Court for the allowance of an appeal from the judgment of this Court of March 3, 1924, to the Supreme Court of the United States, and in which plaintiff's motion for a new trial was overruled by the Court on April 14, 1924.

Respectfully submitted, Jennings C. Wise, Attorney for Plaintiff.

June 16, 1924.

Ordered: That the above application for appeal be allowed as prayed for.

By the Court.

[fol. 24]

IN COURT OF CLAIMS

[Title omitted]

CLERK'S CERTIFICATE

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the find-

ings of fact and conclusion of law, entered by the court; of the opinion of the court by Hay, J.; of the judgment of the court; of the history of proceedings after entry of judgment; of the plaintiff's application for an appeal and of the order of the court allowing said application.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this Twenty-sixth day of June, A. D., 1924.

F. C. Kleinschmidt, Assistant Clerk Court of Claims. (Seal of the Court of Claims.)

Endorsed on cover: File No. 30,510. Court of Claims. Term No. 545. George William Mottram, appellant, vs. The United States. Filed July 18th, 1924. File No. 30,510.

